No. 86-763

IN THE

# Supreme Court of the United States

October Term, 1986

W. NYLES SPURLOCK,

*Petitioner,*

v.

LOIS E. WREN,

*Respondent.*

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

SUPPLEMENTAL APPENDIX

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF WYOMING**

| | | |
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| LOIS E. WREN,<br>Plaintiff, | ) | |
| vs. | ) | NO. C82-0157-B |
| W. NYLES SPURLOCK,<br>HUGH SIMMONS,<br>CARBON COUNTY SCHOOL<br>DISTRICT NO. 1,<br>Defendants. | ) | |

## ORDER ON MOTIONS

This matter having come on for hearing before the Honorable Clarence A. Brimmer, United States District Judge for the District of Wyoming, upon Defendant Spurlock's Motion for Judgment Notwithstanding the Verdict, and upon Defendant Spurlock's Motion for Relief from Judgment on Grounds of Satisfaction. Counsel present were Patrick E. Hacker, Esq., for the Plaintiff, and Lawrence G. Orr, Esq., and Lynn Boak Orr, Esq., for Defendant Nyles Spurlock. The Court having reviewed the pleadings, having considered the arguments of counsel, and being otherwise advised in the premises, FINDS and ORDERS as follows:

The Plaintiff entered a settlement agreement with Defendants Simmons, and Carbon County School District Number 1 in an amount of $125,000. The trial in this matter thereafter continued concerning liability as between the Plaintiff and Defendant Spurlock. After all evidence was presented, the jury returned a verdict in favor of the Plaintiff awarding $113,000 in compensatory damages, and $7,500 in punitive damages. In his Motion for Relief from Judgment Defendant Spurlock argues that he is entitled to set off the judgment by the amount of the settlement, and that therefore the judgment should be declared to be satisifed by the Court.

Initially, Defendant Spurlock argues that federal law governs the right to contribution, and thus the effect of a settlement, in the context of a civil damages action brought under 42 U.S.C. § 1983. The governing provision controlling this question is 42 U.S.C. § 1988, which states in part:

> Proceedings in vindication of civil rights.
>
> The jurisdiction in civil... matters conferred on district courts by the provisions of this chapter... for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adaptable to the object, or are deficient in the provisions necessary to furnish suitable remedies... the common law, as modified and changed by the constitution and statutes of the state wherein the Court sits having jurisdiction over such civil... cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause...

Title 42 of the United States Code is silent upon the issue of the right and effect of contribution. Federal Courts have divided on the question whether specific State contribution statutes should be applied in civil actions under 42 U.S.C. § 1983, or where such provisions are inconsistent with the Constitution or laws of the United States under 42 U.S.C. § 1988, as that provision was construed in *Robertson v. Wegmann*, 436 U.S. 584, 588-90 (1978); *Glus v. G. C. Murphy Co.*, 629 F2d 248 (3rd Cir., 1980), vacated in part and remanded sub. nom.; *Retail, Wholesale, and Dept. Store Union v. G. C. Murphy Co.*, 451 U.S. 935 (1981); *Denicola v. G. C. Murphy Co.*, 562 F2d 889 (3rd Cir., 1977); *Johnson v. Rogers*, 621 F2d 300 (8th Cir., 1980); *Miller v. Apartment and Homes of New Jersey, Inc.*, 646 F2d 101 (3rd Cir., 1981). The United States Supreme Court ruled that contribution under state law between

unions and employers was inconsistent with Federal law in the context of civil rights actions brought under the Equal Pay Act, and Title VII, but restricted its ruling to that context and refused to speculate whether contribution would be available in civil actions brought under other civil rights provisions. *Northwest Airlines, Inc. v. Transport Workers*, 451 U.S. 77 (1981). Thus no clear precedent exists to aid the Court in determination of this question.

However, the Court believes that it is not necessary to determine this issue in order to resolve the question presented in the Defendant's Motion for Relief from Judgment. The movant is not requesting the Court to grant or deny contribution from the opponent to this motion. Furthermore, the provisions of W.S. § 1-1-110, as construed by *Danculovich v. Brown*, 593 P2d 187 (Wyo., 1979) determine the question whether a Plaintiff's recovery should be reduced based on the Plaintiff's negligence where the Defendant has been found to have committeed a wilful or intential tort, and do not answer the question presented as to whether the settlement should offset the judgment recovered by the Plaintiff against Defendant Spurlock. This instead is a question of proximate cause, and of whether or not the claims alleged against the various Defendants in this action are divisible. The jury was instructed to award the Plaintiff only damages proximately caused by Defendant Spurlock's misconduct. The Court believes that the claims asserted are divisible, and that substantial evidence supports the jury's verdict as to proximate cause. Therefore Defendant Spurlock's Motion for Relief from the Judgment should be denied.

The Court also believes that substantial evidence supports the remainder of the jury's verdict. Therefore Defendant Spurlock's Motion for Judgment Notwithstanding the Verdict should be denied. It is hereby

ORDERED that Defendant Spurlock's Motion for Relief from Judgment be, and the same hereby is, denied with prejudice. It is further

ORDERED that Defendant Spurlock's Motion for Judgment Notwithstanding the Verdict be, and the same hereby is, denied with prejudice.

Dated this 30th day of September, 1983.

/s/ Clarence A. Brimmer
UNITED STATES DISTRICT JUDGE